**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 2917/2005

SMT. NEETA KHANDAKA
v
VISHNU KUMAR

S. B. CIVIL MISC. APPEAL NO.2639/2005

VISHNU KUMAR
v
SMT. NEETA KHANDAKA

Date of Judgment: 19th FEBRUARY, 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. Dhanesh Saraswat for the plaintiff-appellant
Mr. Sudesh Bansal for the defendant-respondent.

By Court:

Aggrieved by the order dated 29th August, 2005, both the landlady and the tenant have filed two separate appeals. Since both these appeals amenate from the same impugned order, they are being decided by this common judgment. Vide order dated 29th August, 2005, the Addl. District Judge No. 5, Jaipur City, Jaipur had determined the provisional rent under Section 13(3) read with Section 7 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (henceforth to be referred to as 'the Act', for short).

The facts are being taken from SB Civil Misc. Appeal No.

2917/05 and are as under:-

The property is a shop situated at Shiv Nagar near Sanganer bridge, Main Tonk Road at Jaipur. Initially the said shop was owned by Mr. Sumer Prakash Khandaka, who had rented out the said shop to the defendant-tenant. Subsequently, Mr. Khandaka gifted the said property to the appellant. The said shop was rented out at the monthly rent of Rs. 1300/-. According to the appellant the defendant continued to pay the rent till 30th June, 2001. However, thereafter he refused to pay the rent. Therefore, he has committed default in payment of the rent. Till the date of the filing of application there was arrears of Rs. 18,200/- against the defendant. The appellant further contended that the said shop is located in a well developed area of Jaipur where the rental value have increased phenomenally, therefore, the standard rent needs to be fixed under Section 6 of the Act. Thus, he filed a civil suit for eviction on the ground of default in payment of rent under Section 13 of the Act alongwith an application for fixation of standard rent under Section 6 of the Act.

The defendant denied the allegation of the plaint. According to him no rent was due against him He further claimed that the rent was paid up to July, 2002. Moreover, he denied the increase of rental value in the area and questioned the fixation of

standard rent at Rs. 3,500/- per month as claimed by the appellant. After hearing both the parties vide order dated 29th August, 2005, the learned Judge determined the provisional rent @ Rs. 3,000/- per month to be paid to the appellant from September, 2005. Since the appellant is of the view that the provisional rent, so fixed, is on the lower side, she has filed the present appeal before this Court.

Mr. Dhanesh Saraswat has vehemently argued that between 1999 and 2005 the rental value of commercial premises has sky-rocketed in Jaipur. Therefore, the fixation of the provisional rent at Rs. 3,000/- per month is on the lower side. Secondly, according to him the provisional rent should have been paid retrospectively from the date of the filing of suit and not prospectively from September, 2005 onwards.

On the other hand, Mr. Sudesh Bansal, the learned counsel for the tenant has contended that the rental value in the area has not increased to the extent claimed by the landlady. Moreover, he has argued that the fixation of provisional rent at the rate of Rs. 3,000/- is on the higher side and should be reduced. Lastly, he has argued that in case application under Section 6 of the Act for fixation of standard rent is filed by the landlord / landlady, the Court does not have the power under Section 7 of the Act to direct a retrospective payment of the provisional rent. In order to buttress

his contentions he has relied upon the case of Shri Om Prakash Taneja Vs. Saraogi Mansion Estate Pvt. Ltd. (SBCA No. 459/2004) decided by this Court on 4.9.2006.

We have heard learned counsels and have perused the impugned order.

The term 'provisional' has not been defined in the Act. However, the word 'provisional' means temporary or interim. Section 7 of the Act casts a duty on the Court to decide the provisional rent at the earliest. Therefore, a provisional rent is decided at the initial stage. The determination of the rent under Section 7 is only an interim and is not a final fixation of the standard rent. Therefore, the learned Judge has correctly noticed the fact that the appellant herself wanted the standard rent to be fixed @ Rs. 3,500/- per month. He has further noticed the fact that according to the defendant himself, the shop adjacent to the shop in question was paying a rent of Rs. 3,400/- per month. Therefore, the learned Judge has reasonably calculated the provisional rent to be Rs. 3,000/- per month. The assessment certainly increases the rent from Rs. 1,300/- to Rs. 3,000/- per month. Thus, assessment is in consonance with the fact that the rental value in the area has increased. Therefore, this Court finds no reason for interference with the decision of the learned Judge on this point.

As far as retrospective payment of rent is concerned, in the case of Shri Om Prakash Taneja (supra) this Court had already held that in case a civil suit for fixation of the standard rent has been filed by the landlord, then the Court does not have the power to grant a retrospective payment of provisional rent under Section 7 of the Act. In such a case the provisional rent is payable only from the date of the order. Hence, the learned Judge is legally justified in directing that the provisional rent shall be paid from September, 2005 and not from a prior date.

In the result, there is no force in these appeals. They are, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.